



Compliance Commission of The Bahamas

NOTICE

POLICY ON ADMINISTRATIVE PENALTIES FOR CONSTITUENTS OF THE COMPLIANCE COMMISSION OF THE BAHAMAS UNDER THE FINANCIAL TRANSACTIONS REPORTING ACT 2018¹

Date Issued: February 6th, 2019

1. Introduction

- 1.1 This Notice is issued by the Compliance Commission of The Bahamas (the Commission) to advise of the implementation of an Administrative Penalty Policy for Constituents of the Commission per section 33(2) of the FTRA.
- 1.2 The Compliance Commission is an independent Statutory Authority established by section 39 of the Financial Transactions Reporting Act, Ch 368 (continued in existence per section 31 of the FTRA), for the express purpose of ensuring that financial institutions which fall within its remit comply with the provisions of the substantive laws in The Bahamas relating to Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT).
- 1.3 Pursuant to section 57 of the FTRA, notwithstanding any penalties under the FTRA, the Commission as a Supervisory Authority² may impose administrative penalties to financial institutions and individuals of financial institutions for failure to comply with provisions of the FTRA and Proceeds of Crime Act 2018 (POCA).
- 1.4 Administrative penalties are monetary penalties imposed by the Commission via legislative authority without the commencement of legal proceedings. The imposition of administrative penalties provides an alternative reprimand which is less costly and time consuming.
- 1.5 Penalties are imposed as a mechanism to enforce compliance with regulatory legislation and dissuade financial institutions and individuals from breaching their obligations under the FTRA or POCA.
- 1.6 This policy sets out the process that the Commission will usually follow when a financial institution or individual of a financial institution fails to comply with the

¹ Hereinafter referred to as the FTRA.

² Section 2 of the FTRA defines Supervisory Authority as "the agency designated by law for ensuring compliance with the requirements of this Act and any other Anti-Money Laundering laws of The Bahamas, and includes the Central Bank of The Bahamas, the Securities Commission of the Bahamas, the Insurance Commission of The Bahamas, the Inspector of Financial and Corporate Services, the Gaming Board and the Compliance Commission.

FTRA or POCA. The Commission may become aware of non-compliance based on examinations, evaluation, complaints or market intelligence. Constituents must familiarize themselves with the penalties and obligations under the FTRA and POCA.

2. Commencement Date

- 2.1 This policy comes into effect on February 6th, 2019 and applies to all constituents of the Commission.

3. Assessment and Application of the Penalty

- 3.1 The Commission will impose penalties on a case-by-case basis according to the facts of each case.
- 3.2 For breaches made by a company, the Commission may impose a maximum penalty up to \$200,000.00³ and with respect to an individual, a penalty up to \$50,000.00⁴. Breaches will be classified in categories of minor, serious or very serious.
- 3.3 When determining the quantity of the penalty, the Commission may take into consideration several factors outlined in paragraph 4 as well as reference made to the annexed Schedule.

4. Factors considered for Amount of Penalty

- 4.1 In determining the amount of a penalty, the Commission will consider the following factors⁵:
- a. The gravity and duration of the contravention or failure;
 - b. The degree of responsibility of the financial institution or person on whom the Commission proposes to implement the penalty;
 - c. The financial strength of the financial institution or person;
 - d. The amount of profit gained or loss avoided by the financial institution or person;
 - e. The loss to third parties caused by the contravention;
 - f. The level of cooperation of the financial institution or person with the Commission;
 - g. Any previous contraventions; and
 - h. Any potential systemic consequences of the contravention.
- 4.2 The above factors are not exhaustive, and not all factors may be applicable to each case. Additional factors may also be considered.

5. Written Warnings

- 5.1 Prior to imposing a penalty for contravention of the FTRA, the Commission will issue a written warning containing the following information⁶:

³ Section 57(1)(i) of the FTRA.

⁴ Section 57(1)(i) of the FTRA.

⁵ Section 57(4) of the FTRA.

⁶ Section 57(5) of the FTRA.

- a. The nature of the contravention;
- b. The amount of the penalty; and
- c. A reasonable period, not less than twenty-eight (28) days from the date of the notice within which the financial institution or person to whom the warning was issued to may make representations to the Commission.

6. Final Decision

- 6.1 After reviewing any representations by the financial institution or person to whom a written warning was issued, the Commission must determine within a reasonable period whether or not to impose a penalty.
- 6.2 A decision given by the Commission must⁷:
 - a. Be in writing;
 - b. Give the Commission's reason for the decision; and
 - c. Give an indication of –
 - (i) Any right to have the matter appealed provided under any other law governing that financial institution; and
 - (ii) The procedure for an appeal.
- 6.3 If the Commission chooses not to take the action stated in the written warning or the action referred to in its decision, the Commission must give a notice of discontinuance to the financial institution or person to whom the written warning or decision was given to.

7. Payment of Penalty

- 7.1 All penalties must be made payable to the Commission within the allotted time specified by the Commission in its decision. Penalties may be subject to the accrual of interest for late payment.

8. Publication of Penalty

- 8.1 The Commission will publish the name of individuals or firms that breached obligations, the nature of the offence and the amount of the penalty imposed.



Mr. Andrew Strachan
Inspector of the Compliance Commission

Attachment: Schedule of Administrative Monetary Penalties

⁷ Section 57(8) of the FTRA.

**SCHEDULE OF ADMINISTRATIVE MONETARY PENALTIES VIA THE FINANCIAL TRANSACTIONS REPORTING
ACT 2018**

Offence	Section	Classification of Offence	Amount of Penalty for Financial Institution	Amount of Penalty for Individual
Failure to conduct, document, update or provide a risk assessment upon request to the Supervisory Authority.	5	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to identify a facility holder or obtain any other requirements of the facility holder and beneficial owners for customer due diligence.	6 - 10	Very Serious	Up to \$200,000.	Up to \$50,000.
Establishing or maintaining an anonymous account or an account in a fictitious name.	6(4)	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to fulfil the requirements of sections 5 – 9 and 14 and either opens an account or establishes a business relationship; carries out a transaction; or fails to terminate a business relationship.	11	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to conduct ongoing customer due diligence regarding the transactions and accounts of facility holders.	12	Serious	Up to \$125,000.	Up to \$35,000.
Failure to apply enhanced customer due diligence obligations with respect to facility holders, beneficial owner or financial institutions.	13	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to establish a risk management system to determine whether a facility holder or beneficial owner is a politically exposed person.	14	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to maintain records with respect to facility holders or failure to provide such records in a timely basis when required by law.	15	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to maintain records in the manner as required.	16	Minor	Up to \$50,000.	Up to \$20,000.

Failure to destroy records after the expiry of 5 years from the date of the last transaction without reasonable cause.	17	Serious	Up to \$125,000.	Up to \$35,000.
Failure to develop and implement procedures to prevent activities related to identified risks.	19	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to designate a compliance officer.	20	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to implement internal controls with respect to a group of entities.	21	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to ensure compliance by a foreign subsidiary or branch with respect to obligations and/or the application of appropriate additional measures.	23	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to adhere to the prohibition with respect to establishing, operating or dealing with a shell bank domestically or internationally.	24	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to report suspicious transaction(s).	25 - 26	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to register with the Compliance Commission.	33(1)	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to notify the Compliance Commission of changes in registered office or principal place of business.	33(3)(a)	Serious	Up to \$125,000.	Up to \$35,000.
Failure to notify the Compliance Commission of changes in beneficial ownership, director, partner, compliance officer or money laundering reporting officer.	33(3)(b)	Serious	Up to \$125,000.	Up to \$35,000.
Failure to produce any record, information or explanation as required by the Compliance Commission.	34	Very Serious	Up to \$200,000.	Up to \$50,000.
Failure to comply with the Codes of Practice.	37	Very Serious	Up to \$200,000.	Up to \$50,000.